

Amendment No. 1 to SB2106

Gresham
Signature of Sponsor

AMEND Senate Bill No. 2106

House Bill No. 1931*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 49-7-802, is amended by adding the following as new, appropriately designated subdivisions:

() "Account owner" means an individual, association, corporation, trust, charitable organization, or other such entity that establishes an educational investment trust account pursuant to this part or that is otherwise listed as the owner of an education investment trust account;

() "Code" means Section 529 of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 529, as amended and all rules, regulations, notices and interpretations released by the United States treasury, including the internal revenue service;

() "Contributor" means one (1) or more individuals, associations, corporations, trusts, charitable organizations, or other such entities that contributes money or makes a payment to an educational investment trust account established pursuant to this part;

() "Educational investment trust account" means an account that is established by an account owner intended to be applied to an account beneficiary's qualified higher education expenses;

() "Eligible educational institution" shall have the same meaning as set forth in Section 529 of the Internal Revenue Code of 1986, and the rules promulgated thereunder, or other applicable federal law.

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() “Qualified higher education expenses” shall have the same meaning as set forth in Section 529 of the Internal Revenue Code of 1986, and the rules promulgated thereunder, or other applicable federal law;

() “Redemption value” means the cash value of the educational investment trust account attributable to the sum of the principle invested, the interest earned or losses incurred in the principal, less any fees imposed by rule of the board;

() “Trust fund” means the educational investment trust fund or the educational services trust fund established pursuant to § 49-7-812;

SECTION 2. Tennessee Code Annotated, Section 49-7-802(1), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(1) “Beneficiary” for the purposes of the educational investment plan, means an individual designated by the account owner and who meets the requirements of the code. For the purposes of the educational services plan, “beneficiary” means an individual designated under a tuition contract as the individual entitled to apply tuition units purchased under the contract to the payment of that individual’s undergraduate, graduate and professional tuition, and other educational costs. For purposes of the educational services plan, the beneficiary or the purchaser shall have been a resident of this state at the time the contract was entered into by the purchaser and the board;

SECTION 3. Tennessee Code Annotated, Section 49-7-802(3), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(3) "Educational investment plan" means a plan that permits an account owner to establish an educational investment trust account and one or more contributors to make contributions to an educational investment trust account that is intended to be applied to an account beneficiary's qualified higher education expenses;

SECTION 4. Tennessee Code Annotated, Section 49-7-805(5), is amended by deleting the subdivision in its entirety.

SECTION 5. Tennessee Code Annotated, Section 49-7-802(7), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(7) "Program" means the baccalaureate education system trust fund program created in this part. The program may be comprised of two (2) types of qualified tuition plans as defined by the code, including one (1) or more educational investment plan or plans, which may consist of several different investment offerings or one (1) or more educational services plan or plans. Except as otherwise provided, all terms, conditions and limitations shall apply equally to both types of qualified tuition plans;

SECTION 6. Tennessee Code Annotated, Section 49-7-802(8), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(8) "Purchaser" means an individual, association, corporation, trust, charitable organization or other such entity that enters into a tuition contract under this part for the purchase of a tuition unit or units on behalf of a beneficiary relative to the educational services plan;

SECTION 7. Tennessee Code Annotated, Section 49-7-803, is amended by deleting the section in its entirety and by substituting instead the following:

Article XI, §12 of the Tennessee Constitution manifests the intention of the citizens of this state that the advancement and improvement of higher education in this state is an essential governmental function and purpose of this state. Therefore, the general assembly finds that the creation of a trust program, as an agency and instrumentality of the state, to assist students or their families in financing a portion of the costs of attending colleges and universities will increase the number of students who will seek to attend a college or university, and will, therefore, advance and improve higher education in this state. It is, therefore, the legislative intent of this part to establish an educational trust program as an agency and instrumentality of the state to assist families in saving and investing for the qualified higher education expenses of attending an eligible educational institution, and thereby to encourage such students to attend such institutions. In establishing the program, it is further the intent of the general assembly to encourage timely financial planning for higher education by the creation of tuition contracts and the creation of educational investment plan accounts, and to provide assistance and incentives for college savings for the benefit of the children of the people of the state. It is the legislative intent that the program be funded from fees assessed in accordance with §49-7-805(10).

SECTION 8. Tennessee Code Annotated, Section 49-7-804(g), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(g) The board may delegate to the state treasurer the duty to carry out the day-to-day operations and responsibilities of the program. In exercising the delegation, the state treasurer shall be authorized to exercise such powers as are vested in the board that are necessary to fulfill the delegated duties and responsibilities; may assign any duties and responsibilities to the state treasurer's staff or private vendors and contractors, as the state treasurer deems

necessary and proper; and may consult with professionals as necessary about the administration of the program. The state treasurer may also establish policies, guidelines and operating procedures in exercising the state treasurer's delegation from the board.

SECTION 9. Tennessee Code Annotated, Section 49-7-805, is amended by adding the following language as a new, appropriately designated subdivision:

() Operate and provide, itself or through its designees, for the operation of the educational investment plan or plans in a manner that qualifies the plan or plans under the code and takes any and all necessary action to maintain such qualification; provided, that the account owner's rights to fund the respective accounts shall not be limited or impaired.

SECTION 10. Tennessee Code Annotated, Section 49-7-805(1), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(1) Invest any funds of the trust fund in any instrument, obligation, security or property that constitutes legal investments for assets of the Tennessee consolidated retirement system as described in §8-37-104, and as may otherwise be provided herein or approved by the board;

SECTION 11. Tennessee Code Annotated, Section 49-7-805(4), is amended by deleting the language in the subsection in its entirety and by substituting instead the following:

(4) Contract for the provision of all or any part of the services necessary for the management and operation of the program. The board may also contract with any other college savings program established pursuant to § 529 of the Internal Revenue Code, codified in 26 U.S.C. § 529, in order to provide similar benefits for Tennessee residents. The board may further establish, or contract for the establishment of, an incentive plan or plans to encourage Tennessee

residents to participate in any such other college savings program or in any § 529 college savings program established by the state. The board may delegate to the state treasurer the authority to implement such incentives; such implementation shall include, but not be limited to determining the amount of the incentives not to exceed an amount approved by the board, the length of time the incentives shall be available and the method by which the incentives shall be provided. Through the board's delegation, the state treasurer may establish and administer a plan to implement the incentives which the state treasurer may change from time to time without additional board authorization. The incentive plan or plans may consist, in whole or in part, of rebates, grants, scholarships or tax incentives to individual savings accounts established by or on behalf of Tennessee residents in any such college savings program and tax incentives, including but not limited to, the income tax prescribed in §67-2-102; the professional privilege tax prescribed in §67-4-1702; the passenger motor vehicle registration renewal fee prescribed in title 55, chapter 4 or wheel tax prescribed in §7-51-703, for Tennessee residents who establish individual savings accounts in any such college savings program. The board may approve the expenditure of such funds, or funds using other services or programs deemed necessary or appropriate by the board to encourage college savings by Tennessee residents within its approved annual budget. The state treasurer is authorized, but not required, to use forms of electronic payment, including, but not limited to, prepaid debit cards to provide such incentives. Notwithstanding this subdivision (4) or any other law to the contrary, the availability of the amount of the incentive or the cost to cover any other services or programs authorized by this subdivision (4) if intended to be funded by state funds shall be subject to the appropriation of

funds in the general appropriations act for the purposes set forth in this subdivision (4) or from any amount collected by the board under subdivision (7);

SECTION 12. Tennessee Code Annotated, Section 49-7-805(5), is amended by adding the language “derived from the trust funds” between the word “earnings and the punctuation “;”.

SECTION 13. Tennessee Code Annotated, Section 49-7-805(9), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(9) Impose reasonable limits on the number of contract participants in the educational services program at any given period of time;

SECTION 14. Tennessee Code Annotated, Section 49-7-805(12), is amended by deleting the subsection in its entirety and by substituting instead the following language:

(12) Impose limits on the amount of contributions that may be made on behalf of any beneficiary under the educational investment plan or plans;

SECTION 15. Tennessee Code Annotated, Section 49-7-805(16), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(16) Promulgate reasonable substantive and procedural rules as are necessary to carry out the purpose and intent of this part and to ensure that the program is in compliance with the code and other applicable provisions of federal and state law. All such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; and

SECTION 16. Tennessee Code Annotated, Section 49-7-808, is amended by deleting the section in its entirety and by substituting instead the following:

(a) An educational investment plan is established whereby an account owner may participate to create an account in such plan and shall allow any contributor to make contributions to such an account intending for such

contributions and any earnings thereon to be applied toward the qualified higher education expenses of a beneficiary.

(b) The account owner retains ownership of all amounts on deposit in such account unless otherwise provided herein. Earnings accrued to the account shall be considered to be held in trust in the same manner as contributions. Amounts on deposit therein shall be available for expenses and penalties imposed by the plan. An educational investment trust account created on behalf of a beneficiary under this part shall entitle the beneficiary to an amount equal to the funds on deposit in the account during the academic term in which the funds are needed to cover the beneficiary's tuition and other qualified higher education expenses at the eligible educational institution at which the beneficiary is enrolled, not to exceed the redemption value of the account.

(c) The board may develop one (1) or more plans for offering educational investment trust accounts. The plans shall include, but shall not be limited to, the investment vehicles for investing the contributions made to such accounts. The board may cause the imposition and collection of reasonable administrative fees and charges in connection with the creation and maintenance of such educational investment trust accounts.

(d) The funds from the small and minority-owned business assistance program that are transferred to the board pursuant to §65-5-113(c) shall be used for the establishment of an incentive plan or plans as authorized in § 49-7-805(4) for the benefit of low-income individuals. The board shall have the authority to promulgate rules relative to the implementation and administration of the incentive plan or plans. The state treasurer shall be responsible for the day-to-day administration of such incentive plan or plans as established by the board.

SECTION 17. Tennessee Code Annotated, Section 49-7-810(b), is amended by deleting the subsection in its entirety and by substituting instead the following:

(b) Each tuition unit purchased under an educational services plan tuition contract shall cover the cost of the beneficiary's tuition in an amount no greater than one percent (1%) of the weighted average tuition in effect at Tennessee's four-year public universities at the time of use. There is no guarantee by the board, the state, the program or anyone that the contributions, together with the investment return on the contributions, if any, earned on the educational investment trust account will be adequate to pay qualified higher education expenses incurred for the beneficiary or that the amounts contributed to any such account is guaranteed or insured.

SECTION 18. Tennessee Code Annotated, Section 49-7-811(h), is amended by deleting the subsection in its entirety and by substituting instead the following:

(h) Notwithstanding any law to the contrary, the board may promulgate substantive and procedural rules to permit a refund recipient to withdraw part of the balance from an educational investment account established under the educational investment plan without causing termination of the tuition contract and without requiring the refund recipient to establish that the withdrawn amount will be used to pay the tuition or other educational costs of the beneficiary.

SECTION 19. Tennessee Code Annotated, Section 49-7-812, is amended by deleting the section in its entirety and by substituting instead the following:

(a) There are created two (2) Tennessee baccalaureate education system trust funds, the educational investment trust fund and the educational services trust fund. The board, or if designated by the board, the state treasurer shall serve as trustee. These funds shall be held and maintained as separate accounts as provided below:

(1) The educational investment trust fund shall consist solely of:

(A) Contributions received by the board from account owners or contributors on behalf of beneficiaries for a particular educational investment trust account or from any other source public or private;

(B) All interest and investment income earned by such fund;

(C) Any monetary gift of any nature made by any individual by testamentary disposition, including, but not limited to, any specific monetary gift or bequeath made by will, trust or other disposition; and

(D) All other receipts of the board from any other source that the board determines appropriate.

(2) The educational services trust fund shall consist solely of:

(A) Payments received by the board from purchasers on behalf of beneficiaries pursuant to educational services plan contracts or from any other source, public or private;

(B) All interest and investment income earned by the fund;

(C) Any monetary gift of any nature made by any individual by testamentary disposition, including, but not limited to, any specific monetary gift or bequeath made by will, trust or other disposition; and

(D) All other receipts of the board from any other source that the board determines appropriate.

(b) The board shall maintain an account for each tuition contract showing the beneficiary of that educational services plan contract. The account shall also

show the number of tuition units purchased pursuant to that contract if the contract involves the educational services plan.

(c) The assets of the educational services trust fund shall be preserved, invested and expended solely pursuant to and for the purposes of this part and shall not be loaned or otherwise transferred or used for any other purpose. The assets of the funds shall be expended solely to:

(1) Make payments to, or on behalf of, beneficiaries pursuant to §§ 49-7-807(a) and 49-7-808(a);

(2) Make refunds as provided in § 49-7-811; and

(3) Pay the investment fees and other costs of administering the funds.

(d) The amounts on deposit in the program shall not constitute property of the state. The assets of each of the educational investment trust fund and the educational services trust fund shall be preserved, invested and expended pursuant to and for the purposes set forth in this part, and the trust funds moneys shall be held in trust for account owners, beneficiaries and purchasers, as applicable. Neither trust fund shall be construed to be a department, institution or agency of the state. Amounts on deposit in such trust funds shall not be commingled with state funds and the state shall have no claim to or against, or interest in, such funds. Any agreement entered into by or any obligation of such trust funds shall not constitute a debt or obligation of the state and the state shall have no obligation to any account owner, purchaser, contributor, beneficiary or any other person on account of such trusts and all amounts obligated to be paid from the trust funds shall be limited to amounts available for such obligation on deposit in such trusts. The amounts on deposit in any trust fund account may only be disbursed at the direction of the purchaser or account owner or otherwise

in accordance with the provisions of § 49-7-808. A trust fund shall continue in existence as long as they hold any contributions or has any obligations and until its existence is terminated by law, and upon termination any unclaimed assets shall return to the state.

(e) All revenues collected by the program shall not revert to the general fund but shall remain in the program and shall be used to fund the program or the Tennessee financial literacy commission compiled in title 49, chapter 6, part 17.

SECTION 20. Tennessee Code Annotated Section 49-7-813, is amended by deleting the section in its entirety and by substituting instead the following:

The state treasurer shall be the custodian of the trust funds, and the facilities and employees of the state treasurer shall be used and employed in the administration of the funds, including, but not limited to, the keeping of records, the management of bank accounts and other investments, the transfer of funds and the safekeeping of securities evidencing investments and may delegate or subcontract any or all such functions to any entity that the state treasurer deems qualified for such purpose when the state treasurer determines such delegation to be necessary or desirable.

SECTION 21. Tennessee Code Annotated Section 49-7-814 is amended by deleting the section in its entirety and by substituting instead the following:

(a) The board shall establish an investment policy for each trust fund. The board may authorize assets of the trust funds to be invested in any instrument, obligation, security or property that constitutes legal investments for assets of the Tennessee consolidated retirement system, or any other investment deemed appropriate by the board. The board may authorize assets of the funds for the educational services program to be pooled for investment

purposes with the assets of the Tennessee consolidated retirement system or any other assets under the custody of the state treasurer.

(b) In conjunction with § 49-7-805(1) and subsection (a), the board shall cause the amounts on deposit in the educational investment program trust established under §49-7-812(a)(1) to be invested in any instrument or investment vehicle that the board deems reasonable and appropriate to achieve the objectives of the trust, exercising the discretion and care of a prudent person in similar circumstances with similar objectives. The board shall not require the trust to invest directly in obligations of the state or any political subdivision of the state or in any investment or other fund administered by the state treasurer or any other state entity. The assets of the trust shall be continuously invested and reinvested in a manner consistent with the objectives of the trust until disbursed for qualified higher education expenses, expended on expenses incurred by the operations of such trust or distributed to the account owner in accordance with the participation agreement.

SECTION 22. Tennessee Code Annotated Section 49-7-820, is amended by deleting the section in its entirety and by substituting instead the following:

(a) The board shall obtain appropriate actuarial assistance to establish, and maintain, and certify a fund sufficient to defray the obligation of the educational services plan . The actuary shall recommend to the board, and the board shall adopt, actuarial assumptions and appropriate actuarial tables for use in all calculations in connection with such plan.

(b) At least once in each six-year period the actuary shall make an actuarial investigation into the assumptions and tables used in the educational services plan, and taking into account the results of the investigation, the board

shall adopt for the plan the actuarial assumptions and tables that are deemed necessary.

(c) The board of trustees shall keep in convenient form data necessary for actuarial valuation of the fund and for checking the experience of such plan.

(d) On the basis of the tables and assumptions the board of trustees adopts, the actuary shall make a valuation, at least once a year, of the assets and liabilities of the educational services program trust funds.

SECTION 23. Tennessee Code Annotated Section 49-7-822, is amended by deleting the section in its entirety and by substituting instead the following:

Notwithstanding any law to the contrary, all assets, income and distributions of qualified tuition plans as defined by the code authorized by federal law, this part, part 9 of this chapter or by the laws of another state are exempt from any state, county or municipal tax and shall not be subject to execution, attachment, garnishment, the operation of bankruptcy, the insolvency laws or other process whatsoever, nor shall any assignment thereof be enforceable in any court. This exemption shall include, but is not limited to, qualified tuition plans defined in §529 of the Internal Revenue Code, codified in 26 U.S.C. §529, accounts properly designated as education savings accounts, education IRAs or future tuition payment plans, however described, and shall include any properly authorized payments made to or by such funds.

SECTION 24. Tennessee Code Annotated Section 49-7-823, is amended by deleting the section in its entirety and by substituting instead the following:

If the board determines that any of the educational investment plan or plans or the educational services plan is, for any reason, financially unfeasible, or is not beneficial to the citizens of this state or to the state itself, the board may suspend or terminate the plan immediately,

SECTION 25. Tennessee Code Annotated Section 49-7-825(a), is amended by deleting the subsection in its entirety and by substituting instead the following:

(a) Notwithstanding any other law to the contrary, except as provided in subsections (b) and (c), the board and any officer, employee, agent or contractor of the board shall not disclose personal information about any person obtained by the board in connection with the purchase of tuition units or the making of contributions to any educational investment trust fund account under this part.

SECTION 26. Tennessee Code Annotated Section 49-7-826(a), is amended by deleting the subsection in its entirety and by substituting instead the following:

(a) The state or any department, division or agency of the state may establish a scholarship program to award scholarships to students that consist of contributions and earnings accrued in a savings account created through the educational investment plan established pursuant to § 49-7-808. Any scholarship program established under this section shall be registered with the board.

SECTION 27. Tennessee Code Annotated, Title 55, Chapter 4, Part 1, is amended by adding the following language as a new, appropriately designated section:

(a) The department shall assist the board of trustees of the baccalaureate education system trust fund program in the implementation of a passenger motor vehicle registration or wheel tax incentive established under § 49-7-805(4) that shall include, but not be limited to, college savings plan incentive inserts in the department's motor vehicle registration notifications, providing college savings plan incentives information with any website renewal, sending other notifications about college savings incentives by electronic means, and providing information about college savings incentives through any other web-based means.

(b) For any insert included in the mailing of renewal notices that causes the total postal weight to be over one ounce (1 oz.) as permitted by the United States postal service, the board of trustees of the baccalaureate education system trust fund program shall pay the increased cost of mailing.

SECTION 28. Tennessee Code Annotated, Title 67, Chapter 2, Part 1, is amended by adding the following language as a new, appropriately designated section:

(a) The department shall assist the board of trustees of the baccalaureate education system trust fund program in the implementation of an income tax incentive established under § 49-7-805(4) that shall include, but not be limited to, college savings plan incentive inserts in the department's income tax notifications, providing college savings plan incentives information with any website tax payment form, sending other notifications about college savings incentives by electronic means, and providing information about college savings incentives through any other web-based means.

(b) For any insert included in the mailing of renewal notices that causes the total postal weight to be over one ounce (1 oz.) as permitted by the United States postal service, the board of trustees of the baccalaureate education system trust fund program shall pay the increased cost of mailing.

SECTION 29. Tennessee Code Annotated, Title 67, Chapter 4, Part 17, is amended by adding the following language as a new, appropriately designated section:

(a) The department shall assist the board of trustees of the baccalaureate education system trust fund program in the implementation a professional privilege tax incentive established under §49-7-805(4) that shall include, but not be limited to, college savings plan inserts in the department's professional privilege tax notifications, providing college savings plan incentives information with any website tax payment form, sending other notifications about

college savings incentives by electronic means, and providing information about college savings incentives through any other web-based means.

(b) For any insert included in the mailing of renewal notices that causes the total postal weight to be over one ounce (1 oz.) as permitted by the United States postal service, the board of trustees of the baccalaureate education system trust fund program shall pay the increased cost of mailing.

SECTION 30. This act shall take effect upon becoming a law, the public welfare requiring it.